

Message Text

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ACTION NEA-10

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FM AMEMBASSY TEHRAN
TO SECSTATE WASHDC 8037

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EO 11652: N/A
TAGS: EFIN, IR
SUBJ: IRAN'S SURPLUS PROPERTY DEBT

REF: A. STATE 103237, B. TEHRAN 0530, C. TEHRAN 0531

1. EMBASSY APPRECIATES RECEIPT REFTEL, WHICH CONCLUDES, INTER ALIA, THAT A STUDY OF THE UK-IRAN FINANCIAL AGREEMENT OF 1948 DOES NOT ENHANCE THE U.S. CASE IN OPPOSITION TO THE GOI CLAIM AGAINST THE U.S. FOR DAMAGES TO THE IRANIAN RAILROAD.

2. BEFORE CONSIDERING FURTHER ACTION, THE EMBASSY WOULD LIKE TO KNOW WHETHER, IN THE DEPARTMENT'S VIEW, THE UK-IRAN AGREEMENT ENHANCES THE IRANIAN CLAIM. THE FACT THAT THE DOCUMENT NOWHERE EXCULPATES THE U.S. FROM LIABILITY OR HOLDS THE U.S. HARMLESS FOR DAMAGES CAUSED BY OUR OPERATION OF THE RAILROAD WILL DOUBTLESS BE USED BY THE IRANIANS AS EVIDENCE OF THEIR VIEW THAT A SEPARATE CLAIM AGAINST THE U.S. IS SOUNDLY BASED.

3. SIMILARLY, THE IRANIANS CAN BE EXPECTED TO TURN AGAINST US THE ARGUMENT SET FORTH IN PARA 3 OF REFTEL. THE VERY FACT THAT AN AGREEMENT WITH THE UK ON THE SUBJECT OF DAMAGES WAS NEVER SIGNED WOULD, IN THEIR VIEW, MAKE IT IRRELEVANT WHETHER U.S., IN OPERATING THE RAILROADS, WAS OR WAS NOT ACTING AS AN AGENT OF THE U.K. SINCE THERE IS NO QUESTION OF THE FACT THAT U.S. OPERATED THE RAILROADS AND SINCE
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THERE WAS NO REEMENT BINDING IRAN TO ANY SECOND OR THIRD PARTY CONCERNING LIABILITY FOR DAMAGES, THEY CAN OBVIOUSLY BE EXPECTED TO PURSUE RELIEF FOR THOSE DAMAGES FROM ANY ENTITY RESPONSIBLE FOR CAUSING THE DAMAGES.

4. WHILE NOT WISHING TO BELABOR THE POINT, THE EMBASSY BELIEVES THAT THE RECORD WOULD NOT ALTOGETHER SUPPORT

ARGUMENT IN PARA TWO REFTEL A THAT GOI FAILED TO PRESS ITS CLAIMS FOR NEARLY THIRTY YEARS. ALTHOUGH GOI'S WRITTEN CORRESPONDENCE ON THIS POINT ADMITTEDLY DATES FROM 1974 (SO FAR AS EMBASSY RECORDS SHOW), IT IS EMBASSY'S DISTINCT RECOLLECTION THAT VARIOUS MINISTERS OF FINANCE AND OTHER GOI OFFICIALS FROM THE EARLY 1960'S ON REPEATEDLY COUNTERED OUR CLAIM WITH ORAL STATEMENTS THAT GOI WAS OWED COMPENSATION FROM U.S. FOR DAMAGE TO RAILROADS. IN ITS FURTHER EXAMINATION OF THE APPLICABILITY OF "LACHES" DOCTRINE TO IRANIAN COUNTERCLAIM, DEPARTMENT MAY WISH TO TAKE THIS INTO ACCOUNT.

5. IN SUM, WHILE THE EMBASSY UNDERSTANDS AND ACCEPTS THE DEPARTMENT'S LEGAL POSITION IN THE 1976 MEMORANDUM OPPOSING THE IRANIAN CLAIM, IT IS HARD PRESSED TO COMPREHEND HOW WE CAN EXPECT TO "REJECT" THE IRANIAN CLAIM OUT OF HAND. WE ASSUME, THEREFORE, THAT THE U.S. WOULD BE PREPARED TO ENTER INTO NEGOTIATIONS ON THE SUBJECT OF THE RAILROAD DAMAGES CLAIM, AND, IF INDICATED, TO SUBMIT IT FOR ARBITRATION TO SOME THIRD PARTY.

6. WE BELIEVE, THEREFORE, THAT THE DEPARTMENT WOULD BE PRUDENT TO ESCHEW USE OF THE TERM "COUNTERCLAIM" IN DISCUSSING THE IRANIAN CLAIM. WE FEEL THAT THE RAILROAD CLAIM AND THE LEASE-LEND CLAIM SHOULD BE DISCUSSED SEPARATELY. THE U.S. HAS NEVER YET EXPRESSED A WILLINGNESS TO NEGOTIATE, LIMITED OFFICIAL USE

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ARBITRATE, OR OTHERWISE SETTLE THE RAILROAD CLAIM. BEFORE PURSUING THIS MATTER FURTHER, WE FEEL WE NEED AN EXPRESSION OF THE POSITIVE ACTION WHICH THE DEPARTMENT IS PREPARED TO TAKE IN THIS REGARD.

7. ACTION REQUESTED: PLEASE ADVISE WHAT ACTION U.S. IS PREPARED TO TAKE WITH RESPECT TO GOI CLAIM BEYOND OUR WILLINGNESS "TO CAREFULLY EXAMINE ANY ADDITIONAL EVIDENCE GOI CARES TO SUBMIT ON ITS CLAIM."
SULLIVAN

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